

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

 DOTE-00 INR-07 NSAE-00 FAA-00 L-03 SS-15 NSC-05 SP-02

 IO-10 /064 W

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P 151900Z AUG 75

FM AMEMBASSY LONDON

TO SECSTATE WASHDC PRIORITY 3870

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E.O. 11652: N/A

TAGS: EAIR, UK

SUBJ: CIVAIR - PAN AM COMMISSION AND SEABOARD ROUTING
 PROBLEMS

REF: LONDON 11844

1. WE HAVE BEEN UNABLE TO GET IN TOUCH WITH ROGERS AND KEMMIS ADVISES THAT HE NOT CURRENTLY INVOLVED IN AGENT COMMISSION PROBLEM OR SEABOARD ROUTING ISSUE BUT WE WERE ABLE TO TALK TO IAN BROWN ABOUT BOTH MATTERS ON AUGUST 14. BROWN INITIALLY SAID HE VIEWED LETTER SENT TO PANAM ESSENTIALLY AS "PRESERVING BRITISH LEGAL POSITION" BY WHICH HE MEANT DEPT. OF TRADE, HAVING SPENT TIME, EFFORT AND MONEY IN WINNING COURT CASE NOW WAS DEMONSTRATING IT WAS EXERCISING AUTHORITY WHICH COURT OF APPEALS CONFIRMED SECRETARY OF STATE FOR TRADE POSSESSES. BROWN SAID WHEN ROGERS VISITS WASHINGTON NEXT WEEK HE WOULD DISCUSS MODALITIES FOR TRYING TO ESTABLISH CONTROL OVER COMMISSION RATES AND BRINGING CARRIERS INTO LINE AS WELL AS THIRD COUNTRY ENFORCEMENT, ETC. SINCE PROBLEM NOW AN INTERGOVERNMENTAL MATTER, BROWN SAID HE THOUGHT DOT DID NOT REALLY EXPECT PANAM TO ACT ON DOT LETTER UNTIL AFTER WASHINGTON TALKS.

2. HOWEVER, BROWN LATER CALLED US BACK TO SAY HE HAD
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HAD WORD WITH ROGERS AND HIS EARLIER STATEMENTS DID NOT

ACCURATELY REFLECT ROGERS' VIEWS. ACCORDING TO BROWN, ROGERS BELIEVES LETTER TO PANAM SHOULD BE TAKEN AT FACE VALUE: UKG NOW EXPECTS PANAM, WITHOUT DELAY, TO BRING ITS COMMISSION PAYMENTS INTO LINE WITH 7.5 PERCENT COMMISSION LEVEL ON TICKET SALES IN U.K. AND THIRD COUNTRIES AND EXCEPTIONAL TREATMENT FOR SALES IN U.S. IS PROVIDED ONLY UNTIL US/UK TALKS CAN BE HELD TO DECIDE FUTURE COURSE OF ACTION WITH RESPECT TO U.S. MARKET. AS FAR AS ROGERS IS CONCERNED, IN WASHINGTON HE WILL BE INTERESTED ONLY IN DISCUSSING COMMISSION LEVELS FOR SALES IN U.S. ALTHOUGH, OF COURSE, HE WILL BE PREPARED TO LISTEN TO WHAT WE HAVE TO SAY ON OTHER ASPECTS OF COMMISSION PROBLEMS. WHEN WE POINTED OUT AGAIN TO BROWN THAT UKG WOULD BE PLACING PANAM AT COMPETITIVE DISADVANTAGE BY REQUIRING PANAM TO ADHERE TO 7.5 PERCENT RATE WHILE OTHERS WERE PAYING MORE, BROWN COULD ONLY SAY THAT IT WAS NOT UKG'S INTENTION TO DISADVANTAGE PANAM EVEN THOUGH "TEMPORARY" DISADVANTAGE MAY OCCUR.

3. ON SEABOARD ROUTING QUESTION, BROWN WAS VERY GUARDED BUT WE GATHERED FROM HIS REMARKS THAT DOT IS SERIOUSLY CONSIDERING "VARYING" SEABOARD'S PERMIT TO MAKE CARRIER CONFORM TO ROUTE PATTERN WHICH DOT HAD INSISTED UPON BEFORE COURT CASE. WHEN WE ARGUED THAT SUCH A MOVE WOULD BE CONTRARY TO INTERPRETATION OF BILATERAL AGREEMENT WHICH WE HAVE ALWAYS HELD AND WITH WHICH UK HIGH COURT HAD AGREED, BROWN SAID USG VIEWS ON ISSUE ARE WELL-KNOWN AND AS FOR HIGH COURT RULING, DOT HELD THAT IN PANAM CASE COURT OF APPEALS SAID IT NOT FOR UK COURTS TO INTERPRET INTERNATIONAL AGREEMENTS AND THEREFORE HIGH COURT INTERPRETATION OF BILATERAL IN SEABOARD

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CASE WAS WITHOUT STANDING.

3. COMMENT: WE FEEL UK AUTHORITIES ARE TAKING VERY TOUGH LINE ON BOTH AGENT COMMISSION PROBLEM AND SEABOARD ISSUE. WE ARE NOT SURE WHETHER THIS IS NEGOTIATING POSITION FROM WHICH THEY WOULD HOPE TO MOVE TOWARD FAVORABLE COMPROMISE, WHETHER THEY BELIEVE TOUGH LINE IS NEEDED TO GET USG TO TAKE ACTION UK THINKS IS URGENTLY NEEDED, OR WHETHER THEY ARE FEELING HEADY WITH POWER, WHICH COURT OF APPEALS SAID THEY HAVE, AND WANT TO SEE HOW FAR THEY CAN PUSH US WITHOUT ACTUALLY GETTING INTO A FIGHT. WE DO NOT KNOW WHAT TACTICS DEPARTMENT SHOULD ADOPT IN WASHINGTON TALKS BUT BELIEVE WE SHOULD CAREFULLY BEAR IN MIND THAT, FOLLOWING COURT DECISION IN PANAM CASE, DOT POWERS TO CONTROL U.S. CARRIERS ARE UNFETTERED BY AIR SERVICES AGREEMENT WHICH IN ANY EVENT ACCORDING TO THE COURTS, MEANS WHATEVER DOT SAYS IT MEANS. IN THESE CIRCUMSTANCES, ONLY PROTECTION U.S. CARRIERS HAVE AGAINST WHAT COULD BE ARBITRARY OR EVEN DISCRIMINATORY DECISIONS BY DOT IS THAT WHICH IS AFFORDED BY USG. PERHAPS WASHINGTON TALKS WILL GIVE INDICATION WHETHER UKG INTENDS RESOLVE BILATERAL AVIATION DIFFERENCES THROUGH COMPROMISE AND CONCILIATION

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OR WHETHER WE ARE HEADING FOR A PERIOD OF INDIAN-
WRESTLING WITH ONE ANOTHER.

RICHARDSON

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